

OGC 76-1525.

25 March 1976

MEMORANDUM FOR: Director of Security

THROUGH : Associate Deputy Director for Administration

SUBJECT : CIA Countermeasures Activity Under
Executive Order 11905

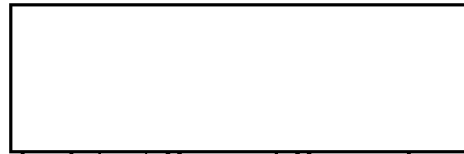
1. As you know, on 17 March we transmitted our position on the above subject to Mr. William Funk, Office of Legal Counsel, Department of Justice, for his comment. We felt this was necessary as a first step in preventing the potential problems that would arise for our countermeasures activity if the electronic surveillance provisions of Executive Order 11905 are interpreted to apply to our sweeps for hostile electronic surveillance.

2. Based upon information provided by the Office of Security, we represented to Mr. Funk in our transmittal letter that "the FBI, State Department, and others currently conduct identical detection activity." Mr. Funk has stated that if any agencies other than the FBI are conducting electronic surveillance detection activity, they are not doing so under procedures approved by the Attorney General because the Attorney General has approved no procedures regarding this activity. Mr. Funk recommends that we refer to this in the letter which we ask the DCI to send to the Attorney General. Consequently, we should be able to definitely state which agencies or military departments, other than the FBI, are a) currently conducting detection operations within the U.S., or b) have conducted them in the past.

3. Mr. Funk recommends that in stating our case that electronic surveillance detection does not result in the "acquisition" of non-public communications, we should specify all the different types of communications that would be subject to interception. These would include, for example, ham radio, citizen band, commercial broadcast, police, fire and marine band, radio-telephone communications and perhaps others. It is Mr. Funk's opinion that of all the types just mentioned, only radio-telephone communications would be non-public communications. He states that "the fact that you incidentally pick up such communications should not make the entire operation an electronic surveillance any more than turning on a citizen band radio would be electronic surveillance because it is capable of picking up radio-telephone communications."

4. Mr. Funk has also asked: "You would not pick up telephone communications transmitted by microwave, would you?" This comment reaffirms that telephone conversations transmitted by microwave constitute a particularly sensitive category to Department of Justice. Consequently since it has been explained to the undersigned that our detection activity would pick up signals in the microwave range, we should be particularly detailed in explaining our experience in encountering these signals. If we encounter signals in the microwave range infrequently, we should further explain that this is because microwave is line-of-sight transmission. Of course it should also be explained that when we encounter such signals, we cannot automatically eliminate them from suspicion. We should also explain briefly the technology which would allow the opposition to conduct surveillance with equipment in the microwave range.

5. It is requested that you provide the above information to the undersigned as soon as possible.



Assistant General Counsel
General Law Division

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OGC 76-1334
17 March 1976

William F. Funk, Esq.
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

Dear Mr. Funk:

Pursuant to our conversation of 8 March 1976, I am enclosing a draft letter which we intend to ask the Director to send to the Attorney General.

The first part of the letter requests modification of the procedures for unconsented physical searches directed against United States persons abroad. There is actually a greater need to have the approved procedure cover such emergency searches than an emergency electronic surveillance because the situations which would require such a search are potentially more serious than those which would call for an electronic surveillance. In addition, because an electronic surveillance requires greater preparation, there will nearly always be time to obtain prior approval. This is not the case with searches in the situations we have in mind.

The second half of the letter states the case for our electronic surveillance detection activity. Since this activity is not conducted for the purpose of acquiring non-public communications, and since the Director and the Agency have affirmative duties to protect intelligence information, we believe there is a reasonable basis to conclude that the activity is permitted. As you may know, the FBI, State Department, and others currently conduct identical detection activity.

Sincerely,

Assistant General Counsel

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Enclosure

OGC: (17 Mar 76)

cc: ADDO

ADDA Approved For Release 2004/09/23 : CIA-RDP78M02660R000200030027-5
Director of Security



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Honorable Edward H. Levi

Attorney General Approved For Release 2004/09/23 : CIA-RDP78M02660R000200030027-5
Department of Justice
Washington, D.C. 20530

Dear Mr. Levi:

I have received your letter transmitting approved procedures required by Executive Order 11905 for specified foreign intelligence and counterintelligence activities. Components of the CIA have been studying the procedures to determine which, if any, areas were not fully coordinated between CIA and the Department of Justice in the limited time available prior to 1 March 1976. Thus far we have identified one such area.

The procedures for unconsented physical searches directed against United States persons abroad do not provide for emergency situations in which there is insufficient time to obtain the Attorney General's prior approval for a search. While the circumstances giving rise to such emergencies would be quite rare, in counterintelligence cases which involve documents or other tangible material critical to the national security or to the life of any CIA officer, employee or agent, we may be faced with fast-moving developments in which there is no time for prior consultation with the Director of Central Intelligence, much less the Attorney General. In such situations, our senior officers overseas should not be faced with the dilemma of choosing between the national security or an individual's safety and conduct for which there is no provision in the procedures under Executive Order 11905.

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area be modified to permit the Director of Central Intelligence, and senior Agency officials overseas designated by him in writing, to authorize searches of United States persons abroad reasonably believed to be acting on behalf of a foreign power or terrorist group and in possession of documents or materials deemed critical to the national security or to the life of any CIA officer, employee or agent. Procedures similar to those applicable to emergency electronic surveillance would apply, as well as the current procedures for the Attorney General's approval of physical searches. Proposed language to accomplish this modification is enclosed.

[There is another area of concern to CIA. Section 5(b)(2) of the Executive Order 11905 provides that CIA "shall not perform electronic surveillance within the United States, except for the purpose of testing equipment under procedures approved by the Attorney General consistent with the law." Under the Order's definition of electronic surveillance, the procedures we employ to detect hostile electronic surveillance targeted against the CIA could be interpreted to fall within this prohibition. However, I do not believe any such result was intended by the Order.]

To determine if Agency facilities, equipment, or personnel are being subjected to hostile electronic surveillance, it is necessary at periodic intervals and on specific occasions to intercept and identify all signals which appear in the radio frequency spectrum. The detection activity is limited to locations controlled or used by CIA or its personnel. Once